IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 695 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT
Versus
MUKESHBHAI NARSIBHAI DODIA

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Appearance :
MR KC SHAH APP for Appellant
None for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 28/06/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

[1] This criminal appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by learned Additional Sessions Judge, Fast Track Court No.3, District: Bhavnagar on 27th January, 2004 in Sessions Case No.131/2002 whereby the present respondent being accused of the Sessions Case came to be acquitted by the trial Court, for the offences punishable under Sections 504, 323 and 302 of the Indian Penal Code as well as for the offence punishable under Section 135 of the Bombay Police Act.

[2] According to the prosecution case, the incident occurred at Bhavnagar on 7th April, 2002

at 6.00 p.m. The complaint was offered by Kailashben w/o. Udesinghbhai Balvantsinh Gohil before “B” Division Police Station at Bhavnagar on the same day. In the incident, Jayvantsinh, aged about 30 years died and he happened to be son of complainant – Kailashben. According to the complaint, on 7th April, 2002, complainant and deceased Jayvantsinh and other family members had been to the house of one Nanjibhai Dodiya on the occasion of betrothal ceremony of Geeta daughter of Nanjibhai Dodiya. Deceased Jayvantsinh was serving cold-drink to guests. Accused was sitting on a scooter nearby, started threatening Jayvantsinh and other boys and mother of the deceased who were present there. Jayvantsinh scolded Mukeshbhai and requested him not to fight with his mother and other boys. Mukeshbhai excited thereupon and sensing trouble at that juncture, Jayvantsinh was sent to his house by her mother. Half an hour, thereafter, near the house of the complainant, accused came and started fighting with Jayvantsinh and in this fighting, accused started giving blows of knife

on back of deceased Jayvantsinh and on account of injuries, Jayvantsinh had fallen down on the ground. The complainant intervened, but she was pushed away by the accused. A crowd was gathered and it was noticed that on the back of Jayvantsinh, there were stabbing wounds and, therefore, complainant and one Bhimsanghbhai Dhuvaranwala shifted Jayvantsinh to the Hospital. On the very night Jayvantsinh died. As stated above Kailashben gave information to police and crime was registered by P.W.8 – Kishorkumar Krupashankar Badheka, the then PSO In-charge of Police Station against the accused for above said charges. Investigation was handed over to P.I. Shri Bhati examined as P.W.9.

[3] The charge-sheet of the above said crime was submitted in the Court of Judicial Magistrate, First Class and, thereafter, the case was committed to the Court of Sessions. The learned Additional Sessions Judge, Fast Track Court No.3, Bhavnagar framed charges against the accused vide Ex.6 on 6th September, 2003 and vide

Ex.7, the accused not pleaded guilty. Thereafter, the prosecution examined nine witnesses and produced on record voluminous documentary evidence. A statement of the accused was recorded by the trial Court under Section 313 of the Code of Criminal Procedure Code. The defence of the accused was of total denial. After hearing the prosecution and the defence, the learned trial Judge came to the above conclusion and, hence this appeal.

[4] Learned APP Mr.K.C.Shah was heard in detail at this juncture in respect of this appeal. We have called for Record & Proceedings from the trial Court, which is available with us. Learned APP assisted us by providing extra copies of the evidence and necessary papers. Learned APP urged for the admission of appeal as the accused was charged for the capital offence and came to be acquitted by the trial Court and submitted that though the witnesses were hostile to the prosecution, the matter requires consideration.

[5] Thus, at this juncture also, we have undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to the broad and reasonable probabilities of the case. The contentions raised by learned APP were also taken into consideration.

[6] Learned trial Judge came to the conclusion vide para-21 of the judgment and order impugned, that material witnesses Kaileshben – complainant, P.W.3 – Kapilaben w/o. Jayvantsinh, P.W.4 Rameshbhai Udeshibhai and P.W.5 – Manjulaben w/o. Rameshbhai did not support the prosecution case and, therefore, the prosecution failed to bring home the guilt of the accused beyond reasonable doubt. The learned trial Judge appreciated the evidence of this material witnesses and after hearing both the sides observed that even nearest relatives of the deceased did not support the prosecution case and only two police witnesses supported the prosecution case and hence, the prosecution

failed to establish charges against the accused.

[7] We have independently assessed the evidence on record and have come to our own conclusion.

[8] **P.W.1** – Kailashben Udesinghbhai, according to the prosecution case, was an eye witness, but in her deposition at Ex.12, she stated that when incident occurred, there was darkness and some unknown person injured Jayvantsinh on account of which he died. She admitted that she had given FIR, Ex.13. She was declared hostile. But in hostile cross-examination, she did not support the prosecution case.

P.W.2 – Udeshignh Balvantsinh, father of the deceased is examined at Ex.14 and stated that when they returned to their house from the betrothal ceremony of daughter of Nanjibhai, there was darkness and some unknown person had beaten deceased Jayvantsinh and he died in the hospital. This witness was also declared hostile.

In the cross-examination, he admitted that police obtained his name and address and in fact, he did not know what incident had occurred. His daughter-in-law i.e. widow of Jayantsinh was cooking in the kitchen at that time.

P.W.3 – Kapilaben widow of Jayvantsinh is examined at Ex.16 and she also stated that some unknown person had beaten Jayvantsinh and, thereafter, Jayvantsinh was shifted to Government Hospital, Bhavnagar where he died. She could not identify weapon used in the crime i.e. knife. She has also been declared hostile.

P.W.4 – Rameshbhai Udeshighbhai brother of the deceased is examined at Ex.17 and he also stated that some unknown person inflicted blows with some weapon upon Jayvantsinh and he could not identify the said person on account of darkness. He also stated that Jayvantsinh died during treatment at Government Hospital, Bhavnagar. This witness is also declared hostile.

P.W.5 – Manjulaben wife of Rameshbhai is examined at Ex.18 and she also stated that some unknown person inflicted blows by some weapon

upon Jayvantsinh. She has also been declared hostile.

Inquest panchnama is produced at Ex.23, Postmortem Note is produced on record at Ex.27 and accordingly the cause of death was due to shock and haemorrhage and due to stab injury on the left side of chest (backside) which penetrated into left lung. It clearly appears that there is no dispute as to homicidal death of Jayvantsinh.

P.W.6 – Jagdinshbhai Chhaganbhai is examined at Ex.29 and he is a panch of panchnama at Ex.30 of scene of offence, but he has not supported the prosecution case and stated that his signature was obtained by the police near Mahila College, while he was at rickshaw stand.

P.W.7 – Husenali Bahadurali is examined at Ex.31 and he is a panch of panchnama at Ex.30 of scene of offence. He also did not support the prosecution case.

P.W.8 – Kishorkumar Krupashankar Badheka is examined at Ex.32 and according to him on 7th April, 2002, while he was Incharge P.S.O., he was

informed by head constable from Government Hospital that Jayvantsinh Udeshi had got injuries in a scuffle and he was brought to hospital. Therefore, he made entries in the station diary and the inquiry was entrusted to P.S.I. Muchhadia. According to this witness, P.S.I. Muchhadia, thereafter, recorded the complaint as offered by complainant – Kailashben which he registered at “B” Division Police Station being C.R.No.203/2002 and investigation was handed over to P.I. Shri Bhati. He has been cross-examined by the defence.

Last witness i.e. **P.W.9** – Amarsingh Mulsingh Bhati is examined at Ex.36 and he investigated the offence and filed the charge-sheet. According to him, he drew the panchnama of scene of offence in presence of panchas and recorded the statement of the accused and arrested the accused. He seized clothes of the accused and drew a recovery panchnama which he produced at Ex.37. He has been cross-examined by the defence.

[9] This is all the evidence of the prosecution. This being an acquittal appeal, even at this juncture, we find that there is no iota of evidence to connect the accused with the crime. Appreciating the evidence of above eye witness of the incident and nearest relatives of the deceased, it is found that no link could be established between accused and alleged crime. Two remaining police witnesses are formal and not helpful to the prosecution to bring home the guilt of the accused. In our independent assessment also, we find that the prosecution has failed to establish the guilt of the accused beyond all reasonable doubt. The appreciation of the evidence undertaken by the trial Court is appropriate and in accordance with the evidence recorded during the trial. There is no reason, therefore, to take a different view than taken by the trial Court. We do not find the judgment and order impugned exceptionable at this jucture also and hence, the following order.

Leave to appeal is refused. Appeal stands

dismissed.

[J. R. VORA,J.]

[BANKIM.N.MEHTA,J.]

(vijay)